

**DEPARTMENT ONE – JUDGE PAUL BEEMAN
TENTATIVE RULINGS SCHEDULED FOR
FRIDAY, AUGUST 13, 2010**

BESERRA v. VALLEO CITY USD
Case No. FCS032750

Compromise of Disputed Claim of Minor

TENTATIVE RULING

Pursuant to California Rules of Court, Rule 7.952, Petitioner, the minor, and counsel are to appear.

GCFS, INC. v. COOK
Case No. VCM104515

Motion by Plaintiff for Attorneys Fees

TENTATIVE RULING

The unopposed motion is granted, based upon the existence of an attorneys fees provision in the underlying contract, and the court's determination of the reasonable amount of attorneys fees incurred in this case. The court awards attorneys fees in the total amount of \$450.00, and confirms the other costs as claimed in the memorandum of costs in the amount of \$666.00.

LENNAR MARE ISLAND, LLC v. NEADS
Case No. VCM107179

Motion by Plaintiff for Leave to Amend Complaint

TENTATIVE RULING

A motion for leave to file an amended pleading must attach a copy of the proposed amended pleading, and state by page, paragraph and line number what allegations are being added. CRC 3.1324(a). A declaration must be filed to support the motion, to specify the effect of the amendment, why it is necessary and proper, when the facts to support it were discovered, and the reasons it was not made earlier. CRC 3.1324(b).

The motion here attached a proposed amended complaint, but failed to state by page, paragraph and line number what allegations were being added. A supporting declaration by Plaintiff's counsel was attached to the proposed

amended complaint as an exhibit, instead of filed as a supporting declaration to the motion, and does not contain all of the necessary information.

In addition, to the extent this motion seeks reclassification of this limited jurisdiction case to unlimited jurisdiction, the notice of motion and its title should expressly so state, and Plaintiff should express its intent to pay the appropriate reclassification fee to the court clerk if reclassification is granted. C.C.P. section 403.060(a); Government Code section 70619; Weil & Brown, Civil Procedure Before Trial, section 3:121, p. 3-28, and section 3:116, p. 3-26.

It is also not clear that Defendant has been properly served with the motion papers.

Once a party appears in a case, they can thereafter be served by mail, to where that party “resides or has his office at a place where there is a delivery service by mail”. C.C.P. section 1012.

A defendant who files an answer must provide on it an address of record, where he or she thereafter can be served.

Defendant’s answer lists a different number address on the same street, as the one identified for Defendant in Plaintiff’s proof of service for the motion papers.

Plaintiff has provided no evidence to the court to establish that this discrepancy in addresses is inconsequential, and/or that Defendant could reasonably have been expected to have received the motion papers mailed to this different address.

In addition, the filing of the amended complaint as currently proposed would create even more problems.

The filing of an amended pleading constitutes a new pleading. Weil & Brown, Civil Procedure Before Trial, section 6:623, p. 6-159, and section 6:704, p. 6-177. It supersedes the prior pleading, rendering it obsolete, and serves to reopen the case, giving the defendant another opportunity to answer or otherwise challenge the amended complaint. This would call into question the court’s prior determination set forth in the possession-only judgment to resolve the issues of damages, costs and attorneys fees by affidavit.

Furthermore, the amount of recoverable damages is limited to the damages alleged in the prayer and/or damage allegations of the operative complaint. Weil & Brown, Civil Procedure Before Trial, section 5:240, p. 5-57.

The proposed 1st amended complaint contains confusing and somewhat contradictory allegations as to the amount of damages claimed. In the prayer part of the proposed form (amended) complaint, Plaintiff continued to allege past-

due rent of \$24,587.00, but also alleged a general right to recovery of damages from October 1, 2009 for each day Defendant remains in possession through entry of judgment. Although the proposed amended complaint did not set forth the total amount of such damages, nor even the date through which Defendant remained in possession, Plaintiff clearly now knows this information. The failure to allege it creates uncertainty as to whether any damages beyond the past-due rent amount as alleged in the proposed amended complaint could be awarded by the court.

Finally, the proposed amended complaint contains insufficient allegations for the court to determine whether Plaintiff has fulfilled its duty to mitigate damages, such as by execution at a much earlier time of its judgment for possession only.

For all of these reasons, Plaintiff's motion is denied, without prejudice to refile.

ESTATE ADMINISTRATION PRE-GRANT ORDERS

ESTATE OF DENNIS HARRY THOMAS

Case No. FPR043584

First and Final Report and Petition for Final Distribution

PRE-GRANT ORDER

The first and final report of the personal representative is approved.

CHARLESTON FAMILY TRUST

Case No.FPR044274

Petition to Establish Trust

Petition for Instructions

PRE-GRANT ORDER

The petition is granted.